

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 56 of 1984

in

SPECIAL CIVIL APPLICATION No 4117 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHREEDEVI VENUGOPAL NAIR

Versus

DIVISIONAL MANAGER

Appearance:

MS DR KACHHAVAH for Appellant

NOTICE SERVED for Respondent No. 1

SERVED BY RPAD - (N) for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL and

Date of decision: 12/11/98

ORAL JUDGEMENT

Being aggrieved by an order passed by the learned Single Judge on 7.12.1983 in Special Civil Application No. 4117/83, the original petitioner has preferred this appeal.

2. The appellant approached this Court with a prayer for directing the Divisional Manager, Life Insurance Corporation to make payment of the policy monies to the appellant-petitioner and to permanently restrain respondent No.1, i.e. the Divisional Manager, Life Insurance Corporation of India (hereinafter referred to as LIC) from making payment of policy money to the respondent No.2, father-in-law of the petitioner.

3. It transpires that the petitioner married Venugopal Nair, son of respondent No.2 on 22.8.1982. Before the marriage of the appellant with the said Venugopal, a policy was issued by LIC on HIS LIFE ON 15.12.1975 wherein the insured Venugopal nominated his father, the respondent No.2. Unfortunately, the said Venugopal expired on 1.2.1983 in Civil Hospital at Ahmedabad. Notice Annexure 'A' on behalf of the appellant was served upon the respondent No.2 pointing out that the appellant is the only legal heir of the deceased Venugopal who was the policy holder bearing policy No. S.16103567. LIC was asked not to make payment without consent of the appellant to anyone except the appellant. In respect thereto, vide Annexure 'B' dated 26th July 1983, the appellant was informed that under section 39 of the Insurance Act, 1938, insurer is bound to make payment of policy to the person who has been nominated and on receipt of all requirements from the person so nominated, the amount will be paid unless within a period of 15 days the Corporation is restrained by a competent court of law from making payment of monies to the nominee. It appears that on receipt of this letter, the appellant hastily approached this Court by filing a writ petition under Article 226 of the Constitution of India for the reliefs mentioned earlier. Learned Single Judge observed that "there is a good deal of force in the contention about the petitioner's right to the property and it will be open for her to have recourse of legal proceedings to have these monies reserved for her". Learned Single Judge pointed out that "this High Court does not take upon itself the duty to deal with all civil disputes or of civil rights". On this short ground, the petition was rejected. However,

the learned Single Judge made interim relief operative for a period of two months from the date of the order to enable the appellant to have further recourse in accordance with law. It is the aforesaid order which according to the appellant is not in accordance with law, is under challenge.

4. It appears that the appellant also filed Civil Application No. 494 of 1984 in the LPA. At the hearing initially, we were told that there is no interim order of any nature whatsoever. The Registry is not in a position to place before us the papers of that Civil Application. However, from the letter received by the Registrar from the LIC of India dated 21.2.1984, it is clear that LIC was directed to deposit a sum of Rs.11,609-90 and the Corporation, along with the said letter, forwarded a cheque dated 20.2.1984 drawn on Central Bank of India in favour of the Registrar, High Court of Gujarat. It also transpires from the bunch of papers in the farad that the cheque was accepted by the Registry. There is an endorsement of the Additional Registrar to this effect. From the copy of the Challan, it also appears that the said cheque was deposited in the Treasury. No action is taken by the appellant to see that the amount received from the LIC is deposited in a Fixed Deposit Account which would have earned interest on the deposit or has not taken any steps for early hearing of the matter though Court directed to place the matter for final hearing (Order reads: "Admit. Post for hearing after service").

5. Learned advocate submitted that in view of the decision of the Division bench of this Court in the case of ATMARAM VS. GUNVANTIBEN reported in 1977 GLR 668, the nominee is a trustee of the amount of the policy. The rights of the legal heirs are not affected because the nominee is not a Class-I heir. In the aforesaid case, son of the appellant was major at the time of taking the policy on his life and was unmarried at the relevant time. In the present case, we may note here that the appellant has not produced any record such as the copy of the policy, marriage registration certificate etc. We take it for granted that under section 39 of the Insurance Act (hereinafter referred to as the Act) as mentioned in the Annexure 'B', reply to Annx. 'A' by the Insurance Company, nominee was other than the appellant and as contended by the appellant, the nominee was her father-in-law. During the lifetime of a policy holder, he has a right to assign the policy or transfer the policy in accordance with section 38 notwithstanding the fact that a person has been named as a nominee under

section 39 (i) of the Act. If the policy matures during the lifetime of a person whose life is insured, the said person would be entitled to the amount insured under the policy. The question of collecting the sums assured with other benefits under the policy by nominee would arise only if the person whose life is insured dies before the maturity of the policy. It is clear from the language of section 39 of the Act that the policy holder retains the interest during his lifetime and no interest is created in favour of the nominee. The Division Bench, in the case of *Atmaram* (supra) said as under in paragraph 7 of the judgment:-

"We may observe that there is no doubt as regards the legal position that in view of the policy of insurance and the legal effect of sec. 39 of the Insurance Act only the person named in the policy as a nominee has a right to receive and collect the moneys. He merely collects it on behalf of the original claimants. If there is a will, the legatees under the will would get it. If the policy holder has died intestate, his legal heirs would get it."

5.1 In the aforesaid case, there was a dispute between the legal heirs on one hand and the nominee on the other hand. The trial Court decided the rights of the parties, mainly the legal right of a nominee vis-a-vis that of the heirs. From the aforesaid decision, it is very clear that nominee is entitled to receive the money from the insurer and has to disburse the amount as per the provision of law, namely, in the instant case, as per section 8 of the Hindu Succession Act, 1956.

6. Nomination as seen from sub-section 1 of section 39 of the Act merely means that the person nominated is the one to whom the monies secured by the policy shall be paid in the event of death of the insured before the policy matures, i.e. money forms part of the estate of the deceased policy holder which would be governed by law of succession. In view of this clear position, the legal heirs would get the amount, but it is for the civil court to decide as to who are the legal heirs and not for this Court in exercise of jurisdiction under Article 226 of the Constitution of India. In our opinion, learned single Judge has rightly rejected the petition, pointing out the nature of the dispute. The appellant has not stated who are the heirs of the deceased. There is no proof of marriage which would entitle the appellant to

have share of the property of the deceased as contemplated under section 8 of the Hindu Succession Act. We may point out here that the appellant suppressed the fact as to the existence of other heirs. In Annexure 'A', notice to LIC, it is stated that the appellant is the only heir. In para 6 of the Special Civil Application, she has claimed that she is the sole heir. Reading the contents of the petition, it appears that apart from the appellant, other heir, namely mother of Venugopal was alive at the relevant time. It is also required to be noted that without joining necessary parties, Court cannot entertain the petition. It was the duty of the appellant to join heirs of her deceased husband. Appellant has not given the details as to who are the other legal heirs.

7. In the absence of marriage certificate or in the absence of affidavit from the respondent and other Class I heirs, even after lapse of long interval, this Court cannot pass any orders except confirming the reasons given by learned Single Judge for dismissing the Special Civil Application. Learned Single Judge has rightly pointed out that when a question of civil dispute is there, it must be adjudicated before the appropriate forum. Learned Advocate for the appellant stated that the appellant has remarried within a short time after the sad demise of Venugopal. We are afraid, therefore, that the appellant has lost interest in this matter and that may be the reason why she has also not even cared to see that the amount deposited by the LIC in this Court is invested in a Fixed Deposit Account for earning interest. If the amount would have so deposited, whosoever is entitled to have the amount would get it with interest and there may not have been any loss of interest.

8. Under the circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge. The appeal is dismissed. We direct the Registry to return the amount to LIC and LIC is directed to remit the same to the nominee after following due procedure, i.e. as per section 39 of the Act.

csm./ -----